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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,503	02/06/2002	Anthony M. Uzzo	03419-P0001B	3329

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EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,503

Applicant(s)

UZZO ET AL.

Examiner

Steven B. McAllister

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 23 recites a route optimization based on real-time fuel level data. However, as understood by the examiner, the original specification does not describe such an element. (It does describe scheduling delivery based on fuel level, and does describe route optimization, but route optimization does not appear to be based on fuel level).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-8, 21-24 and 26-28 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Salvo et al (6,341,271).

Salvo shows a computer 114 accessible by a plurality of vendors; a measurer 108 for measuring the storage level at a customer storage location; a data processor associated with the measurer permitting recording of the level; a communicator associated with the measurer permitting communications with the computer, comprising a wireless transceiver (see e.g., col. 5, lines 15-20); an access interface comprising a web interface (e.g., col. 7, lines 55-60); at least one communications network permitting vendor-computer communication; a database accessible by the computer; a plurality of software modules comprising a management software module for querying the database since the system analyzes information in the database in order to determine historical trends and to determine when to re-order; a scheduling software module for optimizing deliveries based on inventory level and price; an authorization module for securing the system since it is password protected (e.g., col. 7, lines 60-65); and a delivery analysis software module since the software system analyzes inventory data and determines when replenishment has been made. It is noted that the system is inherently capable of use in measuring, analyzing, and delivering any kind of bulk item, including fuel. It is also noted that an administrative software module for enrolling customer locations and administering the system is inherently disclosed since the system of Salvo shows a customer location enrolled in the system and the system administration task must be handled.

Alternatively Salvo shows all elements except that the system deals with fuel and fuel dealers, and that the system has an administrative software module. However, it is notoriously old and well known in the art to provide a system for tracking fuel levels and deliveries, and to provide administrative software modules. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Salvo by using it to deal with fuel and to provide an administrative module in order to broaden the applicability of the system, and to ease administration of the system.

Alternatively Salvo shows all elements except that the system has an administrative software module. However, it is notoriously old and well known in the art to provide an administrative software module. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Salvo by providing an administrative software module in order to ease administration of the system.

As to claim 21, it is noted that Salvo shows all elements as discussed above regarding claim 1, including the central server formatting the data to a dealer format since the server provides access to the data in an html format which the dealer uses (see col.7, lines 55-60 – server provides information to dealer via web interface), and that the information is provided in real time (also lines 55-60).

Alternatively, Salvo shows all elements except that the system is used with measuring and delivering fuel. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to modify the

apparatus of Salvo by using it in dealing with fuel in order to broaden the systems applicability.

As to claim 2, the system comprises a software module for reporting the results through a plurality of networks via the internet.

As to claim 3, the system comprises a module for route optimization (col. 7, lines 15-23).

As to claims 5 and 27, the system includes a module for accounting since the system analyzes and compares price information.

As to claims 6 and 7, the system includes a module which can access GPS data.

As to claim 8, the system provides a monitor for providing a monitoring service (see e.g., Fig. 3).

As to claim 23 and 24, the system shows delivery scheduling based on levels, and route optimization using GPS data.

As to claim 26, the system shows authorization software via password protection of the data website.

As to claim 28, the system shows providing the customer with the data.

Claims 4, 9, 10, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salvo et al.

Salvo shows all elements of the claim except that the computer – user path is wireless. However, it is notoriously old and well known in the art use wireless

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communication between a user and a server (e.g., satellite internet, wireless internet).

It would have been obvious to one of ordinary skill in the art to modify the apparatus of Salvo by using wireless communication in order to allow for portability of the user and to allow for communication in areas where internet access is poor.

As to claim 9, Salvo shows all elements except that the measurer is self-contained. However, it is notoriously old and well known in the art for a measurer to be self-contained. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Salvo by providing a self-contained measurer in order to enable easy, modular change-out of measurers in case of failure.

As to claim 10, Salvo shows all elements except that the communicator is self-contained. However, it is notoriously old and well known in the art for a communicator to be self-contained. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Salvo by providing a self-contained communicator in order to enable easy, modular change-out of communicators in case of failure.

As to claim 25, Salvo shows all elements except that the system has an administrative software module. However, it is notoriously old and well known in the art to provide an administrative software module. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Salvo by providing an administrative software module in order to ease administration of the system.

Response to Arguments

Applicant's arguments with respect to claims 1-10, and 21-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

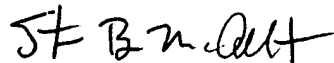
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is 571-272-6785. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6785. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Steven B. McAllister

Steven B. McAllister
Primary Examiner
Art Unit 3627

STEVE B. MCALLISTER
PRIMARY EXAMINER